

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**STATE OF MISSOURI**

**v.  
LAWRENCE E. NEAL**

**RESPONDENT,**

**APPELLANT.**

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DOCKET NUMBER WD70607  
DATE: November 2, 2010

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Appeal From:

Jackson County Circuit Court  
The Honorable Robert M. Schieber, Judge

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Appellate Judges:

Division Three: Victor C. Howard, Presiding Judge, Thomas H. Newton and Gary D. Witt,  
Judges

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Attorneys:

Shaun J. Mackelprang and Jamie P. Rasmussen, Jefferson City, MO, for respondent.

Ruth B. Sanders, Kansas City, MO, for appellant.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

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**STATE OF MISSOURI,**

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**v.**

**LAWRENCE E. NEAL,**

**APPELLANT.**

No. WD70607

Jackson County

Before Division Three Judges: Victor C. Howard, Presiding Judge, Thomas H. Newton and Gary D. Witt, Judges

Lawrence Neal ("Neal") was convicted after a jury trial of one count of forcible rape and one count of robbery in the first degree. Neal appeals the trial court's overruling of his motions for judgment of acquittal as to both charges. Neal also argues the trial court plainly erred in submitting a deficient jury instruction for robbery in the first degree.

K.L.'s car stalled while she was on her way to pick up her boyfriend from work, at which time Neal entered K.L.'s car and obtained a ride to his home. K.L. did not know Neal before these events. Neal told K.L. he needed money and forced K.L. to come to his apartment. In a bedroom, K.L. saw both a knife and what appeared to be a gun. Neal raped her. After the rape, K.L. agreed to take Neal to Price Chopper to cash a check and she then gave the money to Neal. K.L. then drove Neal back to his apartment where Neal forced K.L. to smoke crack and attempted to again rape K.L. K.L. then rode with Neal to pick up her boyfriend and K.L. agreed to tell the boyfriend that Neal had helped her after her car had broken down. K.L. dropped Neal off at his home and later that evening informed police of what had occurred. K.L. was examined at a hospital and Neal's DNA was discovered from K.L.'s rape kit. Neal was tried by a jury and sentenced to consecutive terms of thirty years incarceration for forcible rape and twenty-five years incarceration for first degree robbery. Neal now appeals.

**AFFIRMED IN PART; REVERSED IN PART**

In Point One, Neal argues the trial court erred in overruling his motion for judgment of acquittal for Count I of forcible rape because the State failed to prove Neal used "forcible compulsion" in connection with sexual intercourse. Forcible compulsion means either "(a) Physical force that overcomes reasonable resistance; or (b) A threat, express or implied, that places a person in reasonable fear of death, physical injury or kidnapping of such person or another person." The evidence was sufficient for a jury to find beyond a reasonable doubt that Neal used both an express and implied threat that placed K.L. in fear of death or serious physical injury. Neal threatened to kill K.L. and forced her to have sexual intercourse with him. This constitutes an explicit threat. Also, Neal impliedly threatened K.L. in that Neal did such things as: come uninvited into K.L.'s car; took the keys out of her ignition; told K.L. he needed money; dumped out K.L.'s purse; forced her into an unknown apartment where weapons were located;

and Neal told K.L. she could leave only if she did what he wanted. This was sufficient for the jury to find beyond a reasonable doubt that Neal made an implied threat in connection with the rape. Therefore, the State did prove beyond a reasonable doubt that Neal used "forcible compulsion" in connection with the rape of K.L. to support his conviction for forcible rape. Point One is denied.

In Point Two, Neal argues the trial court erred in overruling his motion for judgment of acquittal for robbery in the first degree because there was not sufficient evidence to prove: (1) he forcibly stole from K.L.; and (2) he threatened the immediate use of a dangerous instrument in the course of the robbery. "Forcibly steals" is defined as when, "in the course of stealing, . . . he uses or threatens the immediate use of physical force upon another person for the purpose of . . . (b) Compelling the owner of such property or another person to deliver up the property or to engage in other conduct which aids in the commission of the theft." Missouri courts consider events immediately surrounding and prior to the robbery to determine whether the elements of the offense are satisfied. The record established facts sufficient to prove beyond a reasonable doubt that Neal threatened the immediate use of physical force against K.L. to compel her to deliver up property. Therefore, the trial court's overruling of Neal's motion for judgment of acquittal for robbery in the first degree was not in error. Point Two is denied.

In Point Three, Neal argues the trial court plainly erred in submitting Instruction #9 for Count III, robbery in the first degree, in that the verdict director submitted to the jury failed to include the necessary element that Neal "threatened the immediate use of a deadly weapon or dangerous instrument." The State submitted the verdict director for robbery in the second degree. A verdict director must contain each element of the crime charged and failure to comply with approved instructions constitutes error. Here, plain error is evident in that the State's use of an incorrect jury instruction totally excused the State from its burden of proof as to an essential element of the crime. Further, the omitted element was not beyond serious dispute but contested at trial. Therefore, although the evidence was sufficient to convict Neal of robbery in the first degree, the omission from the verdict director of the additional element resulted in manifest injustice and a miscarriage of justice. Point Three is granted in part.

As to the remedy for the State's instructional error, the general rule is that the case should be remanded for a new trial. However, this court finds that while it was plain error to convict Neal of robbery in the first degree, it was not error to convict him of the lesser included offense of robbery in the second degree. Neal consented to being tried to this lesser included offense by not objecting to the instruction at trial. The appellate remedy should not exceed the scope of the wrong and neither party should be given a windfall for this error when both were partially responsible. Further, considering the traumatic experience trial is for the victims of rape, the public's interest in having cases fully and finally decided, and judicial economy, this court finds Neal should be properly sentenced for the crime to which both the State and Neal consented he be tried and the crime for which he was properly convicted - robbery in the second degree. The cause is remanded for sentencing within the range of punishment for robbery in the second degree.

**Opinion by: Gary D. Witt, Judge**

November 2, 2010

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